Federal Judge Enjoins 300-Foot Rule for Sex Offenders

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The North Carolina law making it a felony for some sex offenders to go within 300 feet of certain locations intended for children is unconstitutionally overbroad under the First Amendment. Last week, a federal judge permanently enjoined all North Carolina district attorneys from enforcing the law.

Today's post picks up where this prior post left off. It is the latest chapter in Doe v. Cooper, No. 1:13CV711 (M.D.N.C.), a case in which five registered sex offenders filed a federal lawsuit challenging the constitutionality of the premises restrictions of G.S. 14-208.18.

Recall that there are three types of places certain registered sex offenders may not go under G.S. 14-208.18. They are set out in subdivisions (a)(1), (a)(2), and (a)(3) of that section:

(a)(1) On the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds.

(a)(2) Within 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors, including, but not limited to, places described in subdivision (1) of this subsection that are located in malls, shopping centers, or other property open to the general public.

(a)(3) At any place where minors gather for regularly scheduled educational, recreational, or social programs.

The law applies to two categories of offenders: those on the registry for offenses listed in Article 7B of Chapter 14 of the General Statutes, and those where the victim of the offense was under 16 at the time of the offense. G.S. 14-208.18(c).

As discussed in the prior post linked above, a federal judge ruled last December that subdivision (a)(3) was unconstitutionally vague and enjoined every prosecutor in the state from enforcing it. The judge ruled that subdivision (a)(1) was not unconstitutionally vague and may therefore continue to be enforced.

As to subdivision (a)(2), the so-called 300-foot rule, the judge ruled last year that the law was not unconstitutionally vague. However, at that preliminary stage in the proceedings (the parties' cross motions for summary judgment), the court could not fully resolve whether subdivision (a)(2) was unconstitutionally overbroad under the First Amendment. To answer that question would require additional information about which there were, up to that point, genuine disputes as to material facts.

It appeared that the case was headed for trial, but the parties agreed that a trial was unnecessary. Instead, they decided that the court could resolve the remaining issue as a matter of law.

Judge Beaty did that, in the order available here. He ruled that subdivision (a)(2) violates the First Amendment and permanently enjoined all district attorneys in the state from enforcing it.

I'm no First Amendment scholar, but as I understand it, the test for whether a law is unconstitutionally overbroad in violation of the First Amendment is whether the law punishes a substantial amount of protected free speech, judged in relation to the statute's plainly legitimate sweep. For a law to survive such a challenge, the government must show it is narrowly tailored to serve a significant governmental interest—one that would be achieved less effectively absent the regulation, and that does not burden more speech than necessary. Ross v. Early, 746 F.3d 546 (4th Cir. 2014).

Overbreadth challenges are doctrinally different from some other constitutional claims. The overbreadth doctrine invalidates *all* enforcement of an offending law—not just those portions that exceed its legitimate sweep. In that sense they are a special kind of facial challenge.

In this case, the judge ruled that subdivision (a)(2) is unconstitutionally overbroad. Its underlying governmental interest—protecting minors from sexual crimes—is indisputable. But the law is not, the judge concluded, narrowly tailored. It applies to many offenders whose victims were not children, and the attorney general offered nothing beyond anecdotal evidence of any connection between adult-victim offenders and future crimes against minors. Indeed, the attorney general's office declined an express request by the court to offer expert testimony or statistical evidence on that connection—a development the federal judge described as "somewhat unexpected." Mem. Op. at 20.

So, in spite of the "plainly legitimate sweep" of subdivision (a)(2) with respect to offenders who *did* commit crimes against minors, the law's substantial limitations on First Amendment activities for adult-victim offenders—interference with the ability to go to parks, libraries, places of worship, and some government buildings, for example—led the court to deem it overbroad. Seeing no way to fashion a limiting construction for subdivision (a)(2) itself, the judge invalidated the subdivision in its entirety and issued a permanent injunction against its enforcement.

With this latest order in place, only subdivision (a)(1) of G.S. 14-208.18—the portion prohibiting actual entry onto the premises of a place like a school or child care center—remains enforceable. Prosecutions under subdivision (a)(2) and (a)(3) must cease, and defendants already convicted under the law may have grounds for appeal or other post-conviction relief.

Many of the frequently asked questions about G.S. 14-208.18 become moot without subdivisions (a)(2) and (a)(3). For example, churches and other places of worship that have a nursery, youth group, or other programming for children are no longer prohibited by virtue of any protective radius. Child care centers and playgrounds themselves may still be prohibited under subdivision (a)(1), but they no longer give rise to a 300-foot buffer that might render an entire park, fast food restaurant, adjoining street or sidewalk, or other containing premises off limits. Some offenders may yet be subject to conditions of probation or post-release supervision that limit the places they may go, but G.S. 14-208.18 is far less restrictive than it used to be.